

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
12/04/2001

11/27/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000089

Docket Code 512

FILED: \_\_\_\_\_

STATE OF ARIZONA

BARBARA L HULL

v.

JOHN DAVID MELTON  
MCBRIDE

CHRISTOPHER G

GILBERT CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

GILBERT CITY COURT

Cit. No. #72835

Charge:       A. DUI/ALCOHOL-SLIGHTEST DEGREE  
                  B. DUI/WITH AC OF .10 OR ABOVE

This Court has jurisdiction of this appeal pursuant to the  
Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case was originally scheduled for oral argument on August 22, 2001. Prior to that date, Appellant's counsel submitted a Motion to Vacate Oral Argument. The Court granted the motion and vacated oral argument. Unfortunately, this case became lost. It was lost until counsel telephoned this division's secretary and brought it to her attention that oral argument had been vacated and the parties expected that it would not be reset but that it would be deemed submitted to the Court upon written memoranda. Though it is of little consolation to the parties and counsel, this is the only case "administratively lost" by this division. This Court has, however, considered the written memoranda submitted

by counsel, the record from the Gilbert City Court and the audio cassette of the lower court proceedings including the hearing on Appellant's Motion to Suppress.

The only issue presented for review by this Court is whether the trial judge, the Honorable Nicole R. Laurin, erred in denying Defendant's Motion to Suppress all evidence obtained after the stop of Appellant's vehicle by the Gilbert Police Department. The trial judge had denied that motion finding that the stop by the police was lawfully made as a brief seizure of Appellant and his vehicle conducted under the "emergency aid" exception to the warrant requirement.

The sufficiency of the legal basis to justify a brief detention of Appellant is a mixed question of law and fact.<sup>1</sup> An Appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the arresting officer (or stopping officer).<sup>2</sup> This Court must review those factual findings for an abuse of discretion.<sup>3</sup> Only when a trial court's factual finding, or inference drawn from a finding, is not justified or is clearly against reason and the evidence, will an abusive discretion be established.<sup>4</sup> This Court must review *de novo* the ultimate question whether the totality of the circumstances establish a lawful search or seizure.<sup>5</sup>

First of all, even a temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.<sup>6</sup> In this case the trial court found that the stop of Appellant's vehicle was lawfully made because the police were attempting to render emergency aid to an unknown individual who was reported to be sick and on the ground behind a dry-cleaners. In a wellreasoned opinion, the trial judge found that *State v. Jones*<sup>7</sup> and *State v. Fisher*<sup>8</sup> applied to this case.

The emergency aid exception to the warrant requirement permits police officers to enter a residence for a limited search "in the reasonable, good faith belief that there is someone within in need of immediate aid or assistance."<sup>9</sup> The test for application of the emergency aid doctrine is: (1) Whether the police have reasonable grounds to believe that an emergency exists and that someone needs assistance; (2) whether the search is primarily motivated by an intent to make an arrest or to seize evidence; and (3) whether there is a reasonable basis to associate the emergency with the place or person to be searched.<sup>10</sup>

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<sup>1</sup> *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 927 P.2d 776 (1996); *State v. Nagner*, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

<sup>2</sup> *Id.*

<sup>3</sup> *State v. Rogers*, 186 Ariz. 508, 924 P.2d 1027 (1996).

<sup>4</sup> *State v. Chapple*, 135 Ariz. 281, 660 P.2d 1208 (1983); *State v. Nagner*, *supra*.

<sup>5</sup> *State v. Gonzalez-Gutierrez*, *supra*; *State v. Nagner*, *supra*.

<sup>6</sup> *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

<sup>7</sup> 188 Ariz. 388, 937 P.2d 310 (1997).

<sup>8</sup> 141 Ariz. 227, 686 P.2d 750 (1984).

<sup>9</sup> *State v. Jones*, 188 Ariz. at 395, 937 P.2d at 317.

<sup>10</sup> *State v. Fisher*, 141 Ariz. at 237, 686 P.2d at 760.

In this case, the trial judge's ruling denying Appellant's Motion to Suppress appears to be well founded upon the facts of this case. Gilbert Police Officer Meek testified that he was directed to the alley behind the Rose Dry-Cleaners and the dispatcher informed him that a sick or injured person was on the ground in that alley. Officer Meek drove into the alley and did not see anyone on the ground; however, he did see a car leaving the alley headed in his direction. The officer noticed that the rear seat passenger had his eyes closed and appeared to be either passed out, sick, or asleep. The officer signaled Appellant, the driver of the car to stop. The officer asked Appellant questions about the passenger who appeared to be ill or injured. During his conversation with Appellant, Officer Meek noticed that Appellant had watery, bloodshot eyes and an odor of alcohol coming from his breath as he spoke. At that point it was clear that Officer Meek had a duty to conduct a driving while under the influence investigation.

For the reasons cited above, this Court finds that the trial court did not err in denying Defendant's Motion to Suppress.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Gilbert City Court.

IT IS FURTHER ORDERED remanding this matter back to the Gilbert City Court for all future and further proceedings.